

---

MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

---

LAW COURT DOCKET NUMBER: ARO-19-110

---

*State of Maine v. P.S.*

---

On Appeal from the District Court

---

APPELLANT'S BRIEF

---

John W. Tebbetts, Esq.  
Attorney for the Appellant  
Maine Bar No. 5453

Tebbetts Law Office, LLC  
29 Second Street, Suite 1  
Presque Isle, Maine 04769  
[jtebbetts@tebbettslaw.com](mailto:jtebbetts@tebbettslaw.com)  
207-760-7251

## Table of Contents

I.	Table of Authorities .....	1
II.	Procedural History .....	2
III.	Statement of Facts .....	3
IV.	Statement of Issues .....	4
V.	Summary of Argument.....	4
VI.	Argument .....	5

I. Table of Authorities

**CASES**

<i>State v. J.R.</i> , 2018 ME 117,.....	3
--	---

**STATUTES**

15 M.R.S.A. § 3313.....	3
15 M.R.S.A. § 3314(1)(H). ....	3

## II. Procedural History

On May 8, 2018, P.S. was charged with one count of Criminal Trespass, (Class E) in Docket Number [Case 1](#) . On June 4, 2018, the juvenile admitted the violation and was sentenced to a 30 day sentence, fully suspended, with a year of probation, and 40 hours of community service work. On June 26, 2018, a motion to revoke the probation was filed. This motion was based on three violations, 1. Use or Possession of Alcohol, 2. Failure to Complete Community Service work, 3. Failure to abide by a curfew on June 22, 2018. On August 9, 2018, the Juvenile admitted to the violation and was sentenced to a partial revocation, with an additional 40 hours of community service ordered.<sup>1</sup> On November 15, 2018, a Second Motion to Revoke Probation was filed, alleging that P.S. had possessed THC, failed to abide by a curfew, and that he had damaged property. This last allegation gave rise to a new petition filed under [Case 2](#) , alleging one count of Criminal Mischief, Class D. on On December 12, 2018 a Third Motion to Revoke Probation was filed. This motion arose from the same factual pattern as the allegations contained in the Petition filed under [Case 3](#) , on December 21, 2018, alleging a Domestic Violence Assault, (Class D), Assault, (Class D), and Criminal Mischief (Class D.)

---

<sup>1</sup> This motion is not subject to the present appeal.

A consolidated dispositional hearing was held on March 12, 2019. P.S. admitted to each violation. He was sentenced to 30 Days on [Case 1](#) , and an indeterminate sentence until the age of 18 on [Case 2](#) and [Case 3](#) .

### III. Statement of Facts

P.S. was born [in 2004](#) . He was [about 15 years](#) old at the time of his dispositional hearing. On the most recent case, he violated his probation in four ways, each giving rise to a new count on a juvenile petition. He admitted that he had assaulted . (Tr. At 4:21-25). He admitted that he had assaulted . (Tr. At 5:1-4). He admitted that he damaged or destroyed property of [his](#) School. (Tr. 5:5-9). He also admitted that he had destroyed of his mother. (Tr. 5:10-14). He admitted to probation violations for the same conduct. (Tr. 5:15-21).

At the hearing, the state, asked for an indeterminate sentence. (Tr. At 5:22-6:2). The state pointed out they had been working with [P.S.](#) unsuccessfully, and that he did not meet the level of care for an out of home treatment, and they claimed that the only alternative as the indeterminate sentence. (Tr at 6:6-23). They conceded that he was “not the most violent kid or the most criminal person” but expressed a concern that it would change. (Tr. at 6:14-17.) He also indicated that part of the reason for the

sentence was the hope that he could be referred out to a group home. (Tr. 6:18-7:12). They then indicated there was another program available, but that P.S. lacked the required diagnosis as his issue was more “disciplinary” rather than mental health. (7:17-8:4). The juvenile proposed a 30 day sentence, (Tr. at 8:8-10).

P.S.’s caseworker testified and indicated that she agreed with the JCCO’s recommendations, but did not specifically say how long of a commitment she was in favor of. (Tr. at 11:9-12:3). After discussion with the Defendant and counsel, the court stated that “I’m satisfied that there is no alternative but to commit you to long creek, and I don’t think a shock sentence is going to do it. Its going to be till age 18.” (Tr. 17:2-4)

#### IV. Statement of Issues

1. Did the District Court err in sentencing the Juvenile to an indeterminate sentence up to the age of 18, when the court had not exhausted all other alternatives, specifically a 30 day sentence?

#### V. Summary of Argument

1. The District Court erred in in sentencing the Juvenile to an indeterminate sentence to the age of 18, because it failed to consider a less restrictive alternatives, specifically a 30 day sentence.

## VI. Argument

P.S., a juvenile, was \_\_\_\_\_ old at the time of the dispositional hearing. He admitted to four misdemeanor offenses, and one violation of his probation. He was sentenced to a 30 day sanction for violating his probation. On the other two dockets, he was sentenced to an indeterminate sentence, no longer than the age of 18. This sanction was excessive, and failed to sentence him to a less restrictive alternative, a 30 day sentence. 15 M.R.S.A. § 3314(1)(H). This sentence was explicitly advocated for by counsel at the hearing (Tr. 8:8-9)., first that it was the least restrictive alternative to the court. (Tr at9:9-15).

P.S. had only been sentenced to probation and community service prior to the dispositional hearing. He had been detained for at most, two days while awaiting a detention hearing. (Tr. at 8:11-13). His offenses and violations that gave rise to the probation violation and the new charges included a assault on \_\_\_\_\_, a assault on \_\_\_\_\_, and damage of \_\_\_\_\_, as well as a charge that he ruined \_\_\_\_\_ of his mother's.

P.S. should have been sentenced to a 30 day sentence. These are minor offenses each one a misdemeanor if it had been an adult proceeding. This case is immediately distinguishable from the case of *State v. J.R.*, 2018 ME 117, ¶ 15, 191 A.3d 1157, 1163. In *JR*, the Juvenile rather than in the present case, the extent of the child's compliance was much less than in the present case. The Juvenile, while on conditions of release for a charge of theft by with theft by receiving stolen property (Class E), and criminal mischief (Class D), was charged with a single count of aggravated criminal mischief (Class C) and then was charged with burglary (Class B), and two counts of theft by unauthorized taking or transfer (Class E), *State v. J.R.*, 2018 ME 117, ¶ 2-5, 191 A.3d 1157, 1159. J.R. failed to appear for a June 12<sup>th</sup> hearing, and a warrant was issued for his arrest. *Id* at ¶ 5. He was not arrested until October 12 of that year. *Id* at ¶ 6. He was then held until the Adjudication Hearing for about a month. *Id* at ¶ 6. At the hearing, the charges were amended to leave only misdemeanors. *Id*.

In the present case, P.S.'s history is not nearly as severe as that of J.R. He was never charged with a felony. He did not evade arrest for any significant period of time. Furthermore, by the time JR was at his Adjudication hearing, he had very likely been held for most of a 30 day sentence. As a result, the court seemed to be dealing with only two alternatives, probation versus an indeterminate sentence. P.S. conceded that he was going to need some level of incarceration, but believed that 30 days was sufficient.



Furthermore, the district court failed to determine what factors justified an indeterminate sentence as opposed to an 30 day one. While the statute only requires findings to determine that confinement is necessary, it is silent on the distinction between a 30 sentence and a indeterminate one. 15 M.R.S.A. § 3313. The court gave no r

A sentence of 30 days, is by definition a less restrictive alternative to an indeterminate sentence. The district court abused its discretion in sending a year old to an indeterminate sentence under these circumstances.

WHEREFORE, in light of the foregoing, the juvenile, P.S. respectfully requests that this court vacate his sentence, and remand it for further proceedings.

Respectfully Submitted this 25<sup>th</sup> Day of June, 2019

John W. Tebbetts, Esq.  
Attorney for the Appellant  
Maine Bar No. 5453

Tebbetts Law Office, LLC  
29 Second Street, Suite 1  
Presque Isle, Maine 04769  
[jtebbetts@tebbettslaw.com](mailto:jtebbetts@tebbettslaw.com)  
207-760-7251